



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
ISRAEL AND **LILYAN** STAVIS)

For Appellants: Israel Stavis,
in pro. per.

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Israel and **Lilyan** Stavis against a proposed assessment of additional personal income tax in the amount of \$250.61 for the year 1979.

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In the years 1976 through 1978, appellants advanced \$10,000 to Julius and Pauline Gelb for the purpose of assisting the Gelbs' Florida business venture. Julius Gelb is the brother of Lilyan Stavis, appellant-wife. No written agreement was entered into, and appellants did not receive security for the advances. According to appellants, the parties orally agreed to a six percent interest rate and to provisions for the repayment of the advance. When repayment of the advance was not made, appellants attempted to enforce collection by telephone calls and personal visits to Florida. On one of these personal visits, appellants discovered that the venture had gone out of business. **Appellants** determined that repayment of the advances would not be made by the Gelbs and that 1979 was the year the debts became worthless.

Appellants filed a joint **California personal** income tax return for 1979 claiming a \$3,974 bad debt deduction for losses from these uncollectible advances. On the basis of information provided by appellants, respondent determined that appellants had not established that bona fide debts existed. Therefore, respondent issued a notice of proposed assessment to appellants disallowing the amount they claimed as a bad debt deduction. Appellants filed a timely protest; however, respondent affirmed its proposed assessment. This appeal followed.

Revenue and Taxation Code section 17207 allows a deduction for "any debt which becomes worthless within the taxable year." The taxpayer, however, has the burden of proving that he is **entitled** to the bad debt deduction. (Appeal of James C. and Monablancche A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975.) The taxpayer must prove that the debt is bona fide; that is, that it arose "from a **debtor-creditor relationship** based upon a valid and enforceable obligation to pay a fixed or determinable sum of money.", (Former Cal. Admin. Code, tit. 18, reg. 17207(a), subd. (3), (Repealer filed April 18, 1981, Register 81, No. 16).)

Respondent disallowed the deduction of appellants' advance to Julius and Pauline Gelb because appellants failed to prove that a bona fide debt existed. This board has previously noted that **claimed** deductions arising from intrafamily transactions must be carefully scrutinized and that no deduction is allowed unless there is a persuasive showing that there existed at the time of the advance a real expectation of repayment and

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an intent to enforce collection. (Appeal of Joyce D. Kohlman, Cal. St. Bd. of Equal., June 29, 1982; Appeal of Arthur and Kate C. Heimann, Cal. St. Bd. of Equal., Feb. 26, 1963.) Appellants assert that the amounts advanced to Julius and Pauline Gelb were bona fide loans, that they expected repayment, and that they requested repayment. However, these unsupported assertions do not meet appellants' burden of proof. (Appeal of Jesse A. Jones, Cal. St. Bd. of Equal., June 29, 1982; Appeal of Joyce D. Kohlman, supra.) Julius and Pauline Gelb lived a considerable distance from appellants and a sizable sum of money was being advanced, yet appellants did not require a promissory note, security was neither requested nor provided, and there is no evidence of repayment schedules and provisions for interest outside of appellants' unsupported assertions. We have previously held that these factors, when viewed in the aggregate, are sufficient to sustain a finding that advances of the type in issue do not constitute bona fide debts. (See Appeal of Harry and Peggy Groman, Cal. St. Bd. of Equal., Dec. 7, 1982.)

Appellants argue that their assertions are supported by the fact that they made several visits and numerous telephone calls to the brother to request repayment of the advances. However, appellants have produced no evidence to prove that the visits and telephone calls were for the purpose of requesting repayment. Without such evidence, it is reasonable to assume that the visits and telephone calls were recreational or social in nature. (Appeal of Joyce D. Kohlman, supra.) In view of the fact that appellants have not proven that the advances to Julius and Pauline Gelb were bona fide debts, respondent correctly disallowed the claimed bad debt deduction.

For the foregoing reasons, respondent's action must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND **DECREED**, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Israel and **Lilyan** Stavis against a proposed assessment of additional personal income tax in the amount of \$250.61 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of May , 1983, by the **State Board** of Equalization, with Board **Members** Mr. Bennett, Mr. Collis, Mr. **Dronenburg** and Mr. Nevins present.

<u>William M. Bennett</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>Ernest J. Dronenburg, Jr,</u>	, Member
<u>Richard Nevins</u>	, Member
<u></u>	, Member